

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fendley	Team: Team # 6	CCRB Case #: 201309784	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/10/2013 4:00 PM	Location of Incident: Forest Avenue & South Avenue; 121st Precinct stationhouse	Precinct: 121	18 Mo. SOL 4/10/2015	EO SOL 4/10/2015	
Date/Time CV Reported Sat, 10/12/2013 11:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/17/2013 6:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Clyde Moyer	29038	946038	NARCBSI
2. DT3 Mark Scarlatelli	06287	937502	NARCBSI
3. DT3 Steven Sposito	05103	926161	NARCBSI
4. POF Celine Diaz	09228	928191	121 PCT
5. SGT Dmitry Brushnivsky	01417	936251	121 PCT
6. DT3 Mathew Reich	00122	933211	NARCBSI
7. DT3 Martin Banghart	1819	905752	NARCBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Richard Sheahan	04292	937526	121 PCT
2. POM Robert Crimmins	07644	949852	123 PCT
3. LT Justin Farren	00000	930127	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Clyde Moyer	Abuse: Det. Clyde Moyer stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.DT3 Mathew Reich	Abuse: Det. Mathew Reich stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.DT3 Mark Scarlatelli	Abuse: Det. Mark Scarlatelli stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.DT3 Martin Banghart	Abuse: Det. Martin Banghart stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.DT3 Steven Sposito	Abuse: Det. Steven Sposito stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.DT3 Mathew Reich	Abuse: Det. Mathew Reich questioned § 87(2)(b) and § 87(2)(b)	
G.DT3 Mark Scarlatelli	Abuse: Det. Mark Scarlatelli searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.DT3 Martin Banghart	Abuse: Det. Martin Banghart searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
I.DT3 Mathew Reich	Abuse: Det. Mathew Reich searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	

Officer(s)	Allegation	Investigator Recommendation
J.DT3 Steven Sposito	Abuse: Det. Steven Sposito searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
K.DT3 Mathew Reich	Abuse: Det. Mathew Reich searched § 87(2)(b) and § 87(2)(b)	
L.POF Celine Diaz	Abuse: PO Celine Diaz did not process § 87(2)(b) s complaint regarding officers.	
M.SGT Dmitry Brushnivsky	Abuse: Sgt. Dmitry Brushnivsky did not process § 87(2)(b) s complaint regarding officers.	

### Case Summary

§ 87(2)(b) filed this complaint over the telephone with the Internal Affairs Bureau on October 12, 2013 and § 87(2)(b) filed this complaint over the telephone with the Internal Affairs Bureau on October 13, 2013 (encl. ), under log number 2013-43630. The case was forwarded to the CCRB on October 17, 2013 (encl. ).

This case is unsuitable at the time of the investigation because of officer identification issues.

### Civilian Statements

§ 87(2)(b) and § 87(2)(b) provided verified statements at the CCRB on October 22, 2013 (encl. ). Discrepancies are noted below.

At approximately 4:00 p.m., on October 10, 2013, § 87(2)(b) was driving herself and § 87(2)(b) in the vicinity of Forest Avenue and South Avenue in Staten Island when she was pulled over by officers, identified by the investigation as Det. Clyde Moyer, Det. Matthew Reich, Det. Mark Scarlatelli, Det. Martin Banghart and Det. Steven Sposito, all of Narcotics Borough Staten Island (**Allegations A, B, C, D and E**). There was a black or blue unmarked police van behind her and another, slightly smaller one that § 87(2)(b) thought was a minivan, had pulled over in front of her vehicle. She had made no traffic violations prior to being pulled over. Upon being stopped, § 87(2)(b) rolled down all of her windows. Det. Moyer approached the passenger side of § 87(2)(b)'s vehicle and Det. Reich approached the driver side. Det. Moyer had § 87(2)(b) go to the back of the vehicle while Det. Reich asked § 87(2)(b) where they were going, what they were doing, whether there were any drugs in the vehicle and asked for her identification (**Allegation F**).

§ 87(2)(b) was asked to go to the back of the vehicle and she complied. Det. Scarlatelli and Det. Banghart searched the front and back seats and the glove compartment of § 87(2)(b)'s vehicle (**Allegations G and H**). § 87(2)(b) alleged that Det. Reich also searched the vehicle, but § 87(2)(b) did not allege that (**Allegation I**). § 87(2)(b) also thought that Det. Sposito searched her vehicle (**Allegation J**).

§ 87(2)(b) said that when she got to the back of the vehicle, Det. Scarlatelli was putting his hands inside of § 87(2)(b)'s pockets. However, § 87(2)(b) did not allege this. While officers were still searching the vehicle, Det. Reich reached into § 87(2)(b)'s front and back pockets, unbuckled his belt and reached into the front of his pants (**Allegation K**). Det. Reich then had § 87(2)(b) and § 87(2)(b) take their shoes off so that he could shake them out (**subsumed within Allegation K**). None of the officers found anything in the searches. Det. Reich told § 87(2)(b) and § 87(2)(b) to stay away from § 87(2)(b) where they had told officers they had previously been, because officers were watching that residence for drug activity. All officers then drove away from the location. No summonses or arrests resulted.

§ 87(2)(b) said that he and § 87(2)(b) immediately went to the 121<sup>st</sup> Precinct, where two officers, identified by the investigation as PO Celine Diaz and Sgt. Dmitry Brushnivsky, both of the 121<sup>st</sup> Precinct, provided the CCRB's telephone number in order to file a complaint regarding the incident. However, § 87(2)(b) alleged that this number did not work (**Allegations L and M**). § 87(2)(b) did not allege that this interaction occurred.

### Photo Arrays

§ 87(2)(b) and § 87(2)(b) appeared at the CCRB for single shot photo viewing arrays on May 6, 2014 (encl. ). The photo arrays consisted of all officers assigned to plainclothes units within the 121<sup>st</sup> Precinct, the precinct of occurrence, and of Narcotics Borough Staten Island.

§ 87(2)(b) recognized and identified Det. Michael Cafero of Narcotics Borough Staten Island, as the person who remained in one of the officers' vehicles and did nothing during the course of the incident. § 87(2)(b) was not positive, but he also thought that PO Kenneth Greene and PO Anthony Durant, both of the 121st Precinct, were officers who searched § 87(2)(b)'s vehicle.

§ 87(2)(b) recognized and identified PO Clyde Moyer of Narcotics Borough Staten Island as the officer who searched her and § 87(2)(b). She identified Det. Mark Scarlatelli of Narcotics Borough Staten Island as one of the officers who searched her vehicle and identified Det. Steven Sposito as the officer who first approached § 87(2)(b)'s side of the vehicle. § 87(2)(b) also recognized and identified Sgt. Richard Sheahan and PO Robert Crimmins, both of the 121<sup>st</sup> Precinct, as officers who searched her vehicle.

### **Officer Statements**

Det. Moyer was interviewed at the CCRB on July 31, 2014 (encl. 5 X-Y), Det. Scarlatelli was interviewed on August 7, 2014 (encl. 5 AD-AE), Det. Sposito was interviewed on July 23, 2014 (encl. 5 AI-AJ), Det. Reich was interviewed on September 3, 2014 (encl. 5 AO-AP) and Lt. Farren was interviewed on October 2, 2014 (encl. 5 AU-AV). None of their memo books had entries at the time of the incident (encl. 5 V-W; 5 AA-AC; 5 AG-AH; 5 AL-AN; 5 AR-AT). None of the officers recalled the incident and all of them denied being present. They were all shown photographs of § 87(2)(b) and § 87(2)(b) and were given a summary of the incident, but that did not refresh their recollection. Det. Banghart was not interviewed because he has since left the NYPD (encl. 9 AT).

PO Diaz was interviewed at the CCRB on July 17, 2014 (encl. 5 BG-BH) and Sgt. Brushnivsky was interviewed at the CCRB on August 28, 2014 (encl. 5 BK-BL). Their memo books confirmed that they were both assigned to the stationhouse desks on the date of the incident (encl. 5 BE-BF; 5 BI-BJ). Neither of them recalled the incident. Neither the photographs of § 87(2)(b) and § 87(2)(b) nor the summary of the incident refreshed their recollection of the incident. However, PO Diaz said that when a civilian asks to file a complaint, she does give them the telephone number to the CCRB. Sgt. Brushnivsky confirmed that if requested, he would provide the civilian with a complaint report.

### **Conclusion**

#### **Allegations Not Pleaded**

§ 87(2)(b) alleged that Det. Scarlatelli searched inside of § 87(2)(b)'s pockets. However, § 87(2)(b) did not make this allegation so it was not pleaded.

#### **Identification of Subject Officers**

Neither § 87(2)(b) nor § 87(2)(b) were arrested or summonsed as a result of this incident. Consequently, none of those documents were available to the investigation to aid in identifying the potential subject officers or possible commands. Additionally, searches were negative for any Stop, Question and Frisk reports filed regarding this incident (encl. 9 F). Searches were also negative for warrant checks on § 87(2)(b)'s and § 87(2)(b)'s identification in both the MISD database (encl. 9 AS) and the New York State database (encl. 8 D). Further, there were no 911 calls or transmissions regarding this incident (encl. 6 A-F).

§ 87(2)(b) described the police vehicles that pulled her over as a navy and black minivan and another dark van. Fleet confirmed that Narcotics Borough Staten Island was assigned to a blue or black Dodge minivan and a black Ford van on the date of the incident (encl. 6 BF). Fleet also confirmed that there were no vans assigned to the 120<sup>th</sup>, 121<sup>st</sup> or 122<sup>nd</sup> Precinct or their detective squads (encl. 9 I; 9 M). Further, § 87(2)(b) said that the officers told her they

were watching § 87(2)(b) for drug activity. Despite the officers' denial of watching that location, it appeared as being a location observed in Det. Sposito's memo book at a later time on the date of the incident (encl. 5 AH). Therefore, the investigation determined that the subject officers were from the Narcotics Borough Staten Island command.

Narcotics Borough Staten Island Roll Call (encl. 6 AT-AU) and Movement Log (6 AV) listed Det. Moyer, Det. Reich, Det. Scarlatelli, Det. Banghart, Det. Sposito and Lt. Farren as being away from the command and on duty at the time of the incident.

§ 87(2)(b) described the officer who approached her door initially as a white male who was chubby, was bald headed or had thin hair, had a light brown goatee and wore glasses. Det. Moyer is a white male who is 5'8" tall, has a heavy build, has thin brown hair and wears glasses. Further, § 87(2)(b) picked Det. Moyer out of a photo array as one of the subject officers. Therefore, the vehicle stop is pleaded against Det. Moyer.

§ 87(2)(b) described the officer who questioned and searched her and § 87(2)(b) as a white male who was 5'5" tall, was stocky, had dark hair and appeared to be 33 years old; while § 87(2)(b) described him as a white male who was 5'1"-4" tall, was stocky, had a black beard and appeared to be in his 30s. Det. Reich is a white male who is 5'8" tall, has an average build, has brown hair and is § 87(2)(b) old. Because his description best matches that of the subject officer, the vehicle stop and the question and search of § 87(2)(b) and § 87(2)(b) are pleaded against Det. Reich.

§ 87(2)(b) described one of the officers who searched her vehicle as a white male who was 6', had a medium build, brown hair and appeared to be 28-30 years old; while § 87(2)(b) described that officer as a white male who was 6' tall with black hair who appeared to be in his 20s. Det. Scarlatelli is a white male who is 6' tall, has an average build and is § 87(2)(b) old. Further, § 87(2)(b) picked Det. Scarlatelli out of a photo array as one of the subject officers. Therefore, the vehicle stop and the vehicle search are pleaded against Det. Scarlatelli.

§ 87(2)(b) described another officer who searched her vehicle as a male who was 5'7"-8" tall, had gold blond hair and appeared to be 32-34 years old. Det. Banghart is a white male who is 5'9" tall, has an average build, has brown hair and is § 87(2)(b) old. Because his description best matches that of the subject officer out of the remaining narcotics officers, the vehicle stop and vehicle search are pleaded against Det. Banghart.

§ 87(2)(b) described the last officer who searched her vehicle as a white male who was 5'5"-6" tall and was skinny; while § 87(2)(b) described that officer as a white male who was 5'7" tall, was skinny, had gold hair and appeared to be in his 30s. Det. Sposito is a white male who is 5'4" tall, has a thin build, has brown hair and is § 87(2)(b) old. Further, § 87(2)(b) picked Det. Sposito out of a photo array as one of the subject officers. Therefore, the vehicle stop and vehicle search are pleaded against Det. Sposito.

While PO Diaz and Sgt. Brushnivsky did not recall interacting with § 87(2)(b) and § 87(2)(b) they did confirm that they were at the desk on the date of the incident. Their memo books also confirmed that they were both assigned as the t/s operator and the desk sergeant that day. Further, § 87(2)(b)'s descriptions of PO Diaz and Sgt. Brushnivsky were generally consistent with their pedigree information. Therefore, not processing a civilian complaint was pleaded against PO Diaz and Sgt. Brushnivsky.

## Investigative Findings and Recommendations

**Allegation A – Abuse of Authority: Det. Clyde Moyer stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B – Abuse of Authority: Det. Matthew Reich stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation C – Abuse of Authority: Det. Mark Scarlatelli stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation E – Abuse of Authority: Det. Steven Sposito stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

Both § 87(2)(b) and § 87(2)(b) alleged that Det. Moyer, Det. Reich, Det. Scarlatelli and Det. Sposito stopped § 87(2)(b)'s vehicle. They both also denied that any traffic infractions occurred, but said that the officers told them they were stopped because they had previously been at § 87(2)(b).

Det. Moyer, Det. Reich, Det. Scarlatelli and Det. Sposito all denied stopping § 87(2)(b)'s vehicle. Det. Sposito's memo book did note that he was observing § 87(2)(b) that day. However, there is nothing documenting the stop.

§ 87(2)(b)'s and § 87(2)(b)'s statements are generally consistent, including the descriptions of the officers and the fact that § 87(2)(b) was mentioned by them as the reason for the stop. § 87(2)(b), § 87(2)(g)

While § 87(2)(b) denied making any traffic infractions, there is nothing remarkable about her vehicle which could have caused the stop otherwise.

§ 87(2)(g)

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**Allegation D – Abuse of Authority: Det. Martin Banghart stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation H – Abuse of Authority: Det. Martin Banghart searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(b) and § 87(2)(b) alleged that Det. Banghart stopped § 87(2)(b)'s vehicle and searched it. Det. Banghart has since left the NYPD and was unable to be interviewed regarding this incident. § 87(2)(b), § 87(2)(g)

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§ 87(2)(g)

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**Allegation F – Abuse of Authority: Det. Matthew Reich questioned § 87(2)(b) and § 87(2)(b)**

**Allegation G – Abuse of Authority: Det. Mark Scarlatelli searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation I – Abuse of Authority: Det. Matthew Reich searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation J – Abuse of Authority: Det. Steven Sposito searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation K – Abuse of Authority: Det. Matthew Reich searched § 87(2)(b) and § 87(2)(b)**

Both § 87(2)(b) and § 87(2)(b) alleged that Det. Reich questioned them and that Det. Scarlatelli searched § 87(2)(b)'s vehicle. § 87(2)(b) alleged that Det. Reich searched the vehicle as well, but § 87(2)(b) did not allege that. § 87(2)(b) also alleged that Det. Sposito searched her vehicle. Both § 87(2)(b) and § 87(2)(b) alleged that Det. Reich searched § 87(2)(b)'s pockets, unbuckled his pants and felt around inside of his pants, and shook out § 87(2)(b)'s and § 87(2)(b)'s shoes, which he had them remove. Det. Moyer, Det. Reich, Det. Scarlatelli and Det. Sposito all denied that any of these things occurred. Further, all detectives denied that the entire incident even took place.

§ 87(2)(b), § 87(2)(g)  
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**Allegation L – Abuse of Authority: PO Celine Diaz did not process § 87(2)(b)'s complaint against officers.**

**Allegation M – Abuse of Authority: Sgt. Dmitry Brushnivsky did not process § 87(2)(b)'s complaint against officers.**

§ 87(2)(b) alleged that when he went to the 121<sup>st</sup> Precinct stationhouse just after the incident, PO Diaz and Sgt. Brushnivsky provided the incorrect telephone number needed for him to contact the CCRB to file a complaint.

Neither PO Diaz nor Sgt. Brushnivsky recalled the incident, but they both confirmed that they worked at the desk during their tour. However, PO Diaz said that when requested, she provides civilians with the telephone number to the CCRB. Sgt. Brushnivsky also confirmed that if a civilian wanted to file a complaint he would have completed the necessary steps.

There were no witnesses to this incident. § 87(2)(g)  
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§ 87(2)(g)  
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Team: 6

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
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Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date